



## FEDERAL TRADE COMMISSION

### 16 CFR Part 1

#### Adjustments to Civil Penalty Amounts

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) is implementing adjustments to the civil penalty amounts within its jurisdiction to account for inflation, as required by law.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]

**FOR FURTHER INFORMATION CONTACT:** Marie Choi, Attorney (202-326-3368), Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015<sup>1</sup> directs agencies to adjust the civil penalty maximums under their jurisdiction for inflation every January. Accordingly, the Commission issues annual adjustments to the maximum civil penalty amounts under its jurisdiction.<sup>2</sup>

Commission Rule 1.98 sets forth the applicable civil penalty amounts for violations of certain laws enforced by the Commission.<sup>3</sup> As directed by the FCPIAA, the Commission is issuing adjustments to increase these maximum civil penalty amounts to

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<sup>1</sup> Pub. L. No. 114-74, § 701, 129 Stat. 599 (2015). The Act amends the Federal Civil Penalties Inflation Adjustment Act (“FCPIAA”), Pub. L. No. 101-410, 104 Stat. 890 (codified at 28 U.S.C. § 2461 note).

<sup>2</sup> 81 FR 42476 (2016); 82 FR 8135 (2017); 83 FR 2902 (2018); 84 FR 3980 (2019), 85 FR 2014 (2020); 86 FR 2539 (2021).

<sup>3</sup> 16 CFR 1.98.

address inflation since its prior 2021 adjustment. The following adjusted amounts will take effect on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]:

- Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1) (premerger filing notification violations under the Hart-Scott-Rodino Improvements Act)—Increase from \$43,792 to \$46,517;
- Section 11(l) of the Clayton Act, 15 U.S.C. 21(l) (violations of cease and desist orders issued under Clayton Act section 11(b))—Increase from \$23,266 to \$24,714;
- Section 5(l) of the FTC Act, 15 U.S.C. 45(l) (unfair or deceptive acts or practices)—Increase from \$43,792 to \$46,517;
- Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (unfair or deceptive acts or practices)—Increase from \$43,792 to \$46,517;
- Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B) (unfair or deceptive acts or practices)—Increase from \$43,792 to \$46,517;
- Section 10 of the FTC Act, 15 U.S.C. 50 (failure to file required reports)—Increase from \$576 to \$612;
- Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65 (failure by associations engaged solely in export trade to file required statements)—Increase from \$576 to \$612;
- Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b) (failure by wool manufacturers to maintain required records)—Increase from \$576 to \$612;
- Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e) (failure to maintain required records regarding fur products)—Increase from \$576 to \$612;
- Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2) (failure to maintain required records regarding fur products)—Increase from \$576 to \$612;

- Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a) (knowing violations of EPCA § 332, including labeling violations)—Increase from \$474 to \$503;
- Section 525(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) (recycled oil labeling violations)—Increase from \$23,266 to \$24,714;
- Section 525(b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(b) (willful violations of recycled oil labeling requirements)—Increase from \$43,792 to \$46,517;
- Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2) (knowing violations of the Fair Credit Reporting Act)—Increase from \$4,111 to \$4,367;
- Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Pub. L. No. 108-173, as amended by Pub. L. No. 115-263, 21 U.S.C. 355 note (failure to comply with filing requirements)—Increase from \$15,482 to \$16,445; and
- Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304 (violations of prohibitions on market manipulation and provision of false information to federal agencies)—Increase from \$1,246,249 to \$1,323,791.

### **Calculation of inflation adjustments**

The FCPIAA, as amended, directs federal agencies to adjust each civil monetary penalty under their jurisdiction for inflation in January of each year pursuant to a cost-of-living adjustment.<sup>4</sup> The cost-of-living adjustment is based on the percent change between the U.S. Department of Labor’s Consumer Price Index for all-urban consumers (“CPI-U”) for the month of October preceding the date of the adjustment, and the CPI-U for

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<sup>4</sup> 28 U.S.C. 2461 note (4).

October of the prior year.<sup>5</sup> Based on that formula, the cost-of-living adjustment multiplier for 2021 is 1.06222. The FCPIAA also directs that these penalty level adjustments should be rounded to the nearest dollar. Agencies do not have discretion over whether to adjust a maximum civil penalty, or the method used to determine the adjustment.

The following chart illustrates the application of these adjustments to the civil monetary penalties under the Commission's jurisdiction.

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<sup>5</sup> *Id.* (3), (5)(b); Office of Management and Budget, Memorandum M-22-07, *Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 15, 2021), available at: <https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-07.pdf>.

## CALCULATION OF ADJUSTMENTS TO MAXIMUM CIVIL MONETARY PENALTIES

| <i>Citation</i>                          | <i>Description</i>  | <i>2021 Penalty Level</i> | <i>Adjustment multiplier</i> | <i>2022 Penalty Level<br/>(Rounded to the Nearest Dollar)</i> |
|--|---|---------------------------|------------------------------|---|
| 16 CFR 1.98(a):<br>15 U.S.C. 18a(g)(1)   | Premier filing notification violations                                    | \$43,792                  | 1.06222                      | \$46,517  |
| 16 CFR 1.98(b):<br>15 U.S.C. 21(l)       | Violations of cease and desist orders                                     | \$23,266                  | 1.06222                      | \$24,714  |
| 16 CFR 1.98(c):<br>15 U.S.C. 45(l)       | Unfair or deceptive acts or practices                                     | \$43,792                  | 1.06222                      | \$46,517  |
| 16 CFR 1.98(d):<br>15 U.S.C. 45(m)(1)(A) | Unfair or deceptive acts or practices                                     | \$43,792                  | 1.06222                      | \$46,517  |
| 16 CFR 1.98(e):<br>15 U.S.C. 45(m)(1)(B) | Unfair or deceptive acts or practices                                     | \$43,792                  | 1.06222                      | \$46,517  |
| 16 CFR 1.98(f):<br>15 U.S.C. 50          | Failure to file required reports  | \$576                     | 1.06222                      | \$612   |
| 16 CFR 1.98(g):<br>15 U.S.C. 65          | Failure to file required statements                                       | \$576                     | 1.06222                      | \$612   |
| 16 CFR 1.98(h):<br>15 U.S.C. 68d(b)      | Failure to maintain required records                                      | \$576                     | 1.06222                      | \$612   |
| 16 CFR 1.98(i):<br>15 U.S.C. 69a(e)      | Failure to maintain required records                                      | \$576                     | 1.06222                      | \$612   |
| 16 CFR 1.98(j):<br>15 U.S.C. 69f(d)(2)   | Failure to maintain required records                                      | \$576                     | 1.06222                      | \$612   |
| 16 CFR 1.98(k):<br>42 U.S.C. 6303(a)     | Knowing violations  | \$474                     | 1.06222                      | \$503   |
| 16 CFR 1.98(l):<br>42 U.S.C. 6395(a)     | Recycled oil labeling violations  | \$23,266                  | 1.06222                      | \$24,714  |
| 16 CFR 1.98(l):<br>42 U.S.C. 6395(b)     | Willful violations  | \$43,792                  | 1.06222                      | \$46,517  |
| 16 CFR 1.98(m):<br>15 U.S.C. 1681s(a)(2) | Knowing violations  | \$4,111                   | 1.06222                      | \$4,367   |
| 16 CFR 1.98(n):<br>21 U.S.C. 355 note    | Non-compliance with filing requirements                                   | \$15,482                  | 1.06222                      | \$16,445  |
| 16 CFR 1.98(o):<br>42 U.S.C. 17304       | Market manipulation or provision of false information to federal agencies | \$1,246,249               | 1.06222                      | \$1,323,791   |

### **Effective Dates of New Penalties**

These new penalty levels apply to civil penalties assessed after the effective date of the applicable adjustment, including civil penalties whose associated violation predated the effective date.<sup>6</sup> These adjustments do not retrospectively change previously assessed or enforced civil penalties that the FTC is actively collecting or has collected.

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<sup>6</sup> 28 U.S.C. 2461 note (6).

## **Procedural Requirements**

The FCPIAA, as amended, directs agencies to adjust civil monetary penalties through rulemaking and to publish the required inflation adjustments in the *Federal Register*, notwithstanding section 553 of title 5, United States Code. Pursuant to this congressional mandate, prior public notice and comment under the APA and a delayed effective date are not required. For this reason, the requirements of the Regulatory Flexibility Act (“RFA”) also do not apply.<sup>7</sup> Further, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended. 44 U.S.C. 3501 *et seq.*

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

## **List of Subjects for 16 CFR Part 1**

Administrative practice and procedure, Penalties, Trade practices.

## **Text of Amendments**

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

### **PART 1 – GENERAL PROCEDURES**

#### **Subpart L—Civil Penalty Adjustments under the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended**

1. The authority citation for subpart L continues to read as follows:

**Authority:** 28 U.S.C. 2461 note.

2. Revise § 1.98 to read as follows:

#### **§ 1.98 Adjustment of civil monetary penalty amounts.**

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<sup>7</sup> A regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment. *See* 5 U.S.C. 603.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission’s jurisdiction. The following maximum civil penalty amounts apply only to penalties assessed after [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], including those penalties whose associated violation predated [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

- (a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—\$46,517;
- (b) Section 11(l) of the Clayton Act, 15 U.S.C. 21(l)—\$24,714;
- (c) Section 5(l) of the FTC Act, 15 U.S.C. 45(l)—\$46,517;
- (d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—\$46,517;
- (e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—\$46,517;
- (f) Section 10 of the FTC Act, 15 U.S.C. 50—\$612;
- (g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—\$612;
- (h) Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b)—\$ 612;
- (i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—\$ 612;
- (j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—\$ 612;
- (k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—\$503;
- (l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—\$24,714 and \$46,517, respectively;
- (m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—\$4,367;
- (n) Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Pub. L. No. 108-173, as amended by Pub. L. No. 115-263, 21 U.S.C. 355 note—\$16,445;

(o) Section 814(a) of the Energy Independence and Security Act of 2007, 42

U.S.C. 17304—\$1,323,791; and

(p) Civil monetary penalties authorized by reference to the Federal Trade

Commission Act under any other provision of law within the jurisdiction of the

Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of

this section, as applicable.

By direction of the Commission.

**April Tabor,**

*Secretary.*

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